ever, that there is no remedy by mandamus to correct illegalities or mistakes in the precinct canvass and that the only way to get behind the returns is by quo warranto. By a policy of delays it might be possible to defeat entirely the will of the people. On the other hand, by the cutting off of the right to a recount there is gained an added certainty of result and expedition of announcement which is highly desirable. The period of uneasiness and animosity lasts long enough in any event, without being extended by all sorts of contests and appeals; and by doing away with them much is gained, provided an honest election is not thereby endangered. This is not apt to be the result. On the dishonesty of inspectors there is still check enough in the preservation of the ballots, which may be used as evidence in a criminal prosecution. Distrust of public officials has caused the courts to be burdened with all sorts of administrative duties and to be made censors of every step taken by administrative officers. Why should the courts be made boards of canvassers? If election inspectors are dishonest or incapable the remedy is by removing them and selecting better; and the less responsibility the courts assume the more care will the people exercise. C. L. D.

THE LAPSE OF A LEGACY TO A DECEASED CHILD.—The New York Court of Appeals has recently had before it that section of the Code which provides against the lapse of legacies on account of the death of the legatee before the testator, and has held by the close vote of four to three that it will not prevent the lapse of a legacy given to a child who is mentioned merely as one of a class, and is dead at the time the will is made. *Pimel* v. *Betjemann*, (1905), — N. Y. —, 76 N. E. Rep. 157. The facts were that in 1889 one Bahrenburg died leaving a will made in 1887, in which he gave his executors instructions to pay to each of his children who should at the time of his death have reached the age of twenty-one years, five hundred dollars, and to each child who should be a minor at that time, five hundred dollars when he or she should attain the age of twenty-one years. At the time of his death there were living ten of his eleven children, the other having died in 1882, five years before the will was made, leaving a daughter, the present complainant. This daughter claimed to take her mother's share under the statute relating to lapsed legacies, which provides in substance, that when a devise or legacy is made to any child of the testator and such child shall die during the lifetime of the testator leaving a child or other descendant who shall survive the testator, the devise or legacy shall not lapse, but shall rest in the surviving child of such legatee as if the legatee had survived the testator and died intestate. 2 Rev. St. (1st Ed.), p. 66, pt. 2, c. 6, tit. 1, § 52. From a judgment in favor of the plaintiff below the defendant appealed to the Appellate Division, where the judgment was affirmed (91 N. Y. Supp. 49, 99 App. Div. 559), following *Barnes* v. *Huson* (1871), 60 Barb. 598. The judgment of the Appellate Division is now reversed.

The prevailing opinion, written by CHIEF JUSTICE CULLEN, admits at the outset that the statute applies equally to those cases where the legatee is dead

when the will is made and where he dies between that time and the death of the testator, and disclaims the doctrine of the Rhode Island and Maryland cases which hold that inasmuch as a bequest to a dead person is void, no rights arise which can be taken by substitution. *Almy* v. *Jones,* 17 R. I. 265, 21 Atl. 616, 12 L. R. A. 414; *Billingsley* v. *Tongue,* 9 Md. 575. See also for the same rule, *Lindsay* v. *Pleasants* (1846), 4 Ired. (N. C.) Eq. 320; *Pegues* v. *Pegues* (1860), 11 Rich. Eq. 554. The question here is rather whether the testator can be presumed to have intended to include in his general bequest to his children one who had to his knowledge been dead for five years at the time the will was made. In a similar case the Massachusetts court has held that no such presumption arose under the statute and so a descendant of a deceased legatee should be excluded. *Howland* v. *Slade,* 155 Mass. 415, 29 N. E. Rep. 631. This doctrine the New York court follows, fortifying its position with citations from Georgia and Iowa, (*Tolbert* v. *Burns,* 82 Ga. 213, 8 S. E. Rep. 79; *Downing* v. *Nicholson,* 115 Ia. 483, 88 N. W. 1064, 91 Am. St. Rep. 175) and from the English cases which hold that the statute does not apply to bequests to a class. "It seems to me, therefore," says JUDGE CULLEN, "that the clear weight of authority is in favor of the proposition that a bequest to a class does not include persons dead before the making of the will, who, had they survived till that time would have fallen within the description given to the class—of course in the absence of something in the surrounding circumstances to show a different intent." He argues further that to permit the plaintiff to recover here would be to overturn the rule that the word children does not include grandchildren, unless an intention to that effect appears; that if the testator had named his dead child he might have been presumed to have intended her or her issue to take, but as he did not, no such presumption would arise. The case of *Barnes* v. *Huson,* 60 Barb. 598, relied on by the court below and the dissenting judges here, is distinguished on the ground that in it the dead child was named specifically and this showed an intention that he should take, which could not be gathered from the bequest to "each of my children" in the present case.

The dissenting judges, speaking through JUSTICE VANN, argue that *Barnes* v. *Huson,* supra, governs because there is no valid distinction to be drawn between cases where the dead child is mentioned and where he is not, the evil sought to be remedied by the statute being the same in both cases, namely the lapse of legacies to children who ought in justice and equity to receive them; that the statute is remedial and should be liberally construed; and that as the authorities are pretty evenly divided on the question, the nobler and more humane doctrine of *Barnes* v. *Huson* should be followed. They note that even in those states where the "lapsed legacy" statute is held not to apply to cases where the child is dead at the time the will is made it is nevertheless held to apply to bequests to a class. *Howland* v. *Slade,* supra; *Re Stockbridge's Petition,* 145 Mass. 517, 14 N. E. 928; *Bray* v. *Pullen,* 84 Me. 185, 24 Atl. 111. On the point of distinction between the *Barnes* case and the one at bar made by the majority opinion JUDGE VANN says: "There is no substantial difference between a gift to all the members of a class naming none and a gift to each member of a class, naming each one. As the statute

applies to the descendants of every deceased child it should apply to the descendants of a child who is described with certainty, although not by name."

As may be gathered from the two opinions in the present case the courts of the United States are not at all in harmony as to what effect should be given to these statutes, and there is an uncertainty apparent in some of the cases as to the exact basis for their application. *Schumacher* v. *Pearson* (1902), 67 Ohio St. 330. In some of the courts the narrowest possible rule obtains and the statute is held not to apply where the legatee died prior to the making of the will (*Almy* v. *Jones,* supra), in others the time of death is disregarded, but the statute is not applied when the bequest is to a class. *Tolbert* v. *Burns,* supra; *Matter of Nicholson,* supra. In still other jurisdictions the statute is given the widest possible scope and is held to apply to a case like the one under consideration where the bequest is to a member of a class dead at the time the will is made. *Nutter* v. *Vickery,* 64 Me. 490; *Moses* v. *Allen,* 81 Me. 268, 17 Atl. 66; *Guitar* v. *Gordon,* 17 Mo. 408; *Jamison* v. *Hay,* 46 Mo. 546. In view of these conflicting decisions, and taking into consideration that the former rule of the common law worked a great hardship which the statute is designed to alleviate, it seems reasonable to hold with the dissenting opinion that the statute should be looked upon with favor by the courts and no limitations placed upon its operation by them where the legislature has placed none. Mere technicalities should not be permitted to defeat the very purpose of the statute. Those who are entitled to its benefits are equally so whether their dead parent was one of a class or was mentioned by name; whether he died before the will was made or afterward.

C. H. L'H.

UNSIGHTLY ADVERTISEMENTS AND BILLBOARDS.—Æsthetic principles may not be considered by the courts in determining questions concerning the validity of ordinances whose object is to regulate the use of billboards; in order to be upheld statutes and ordinances relating to such matters must be obviously intended to provide for the public safety and must be reasonably necessary to secure it. *City of Passaic* v. *Paterson Billposting, Advertising & Sign Painting Co.*—New Jersey Court of Errors and Appeals—62 Atl. Rep. 267.

Under a statute authorizing the governing body of any city to regulate the size, height, location, position and material of fences, signs, billboards, and advertisements, a city ordinance was passed providing that no sign or billboard shall be at any point more than eight feet above the surface of the ground and that it shall be constructed not less than ten feet from the street line. The plaintiff in error was convicted of the violation of this ordinance and the Supreme Court affirmed the conviction, holding that because the erection of such signs might be attended with danger to the public at times of severe storms or by the decay of their supports, the ordinance was not without legal authority. The Court of Errors and Appeals, however, holds that "such a possibility is not sufficient to justify the municipal authorities in